



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

JUN 23 2004

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Jamie Jacob Morgan

Ferndale, MI 48220-3008

RE: MUR 5358

Dear Mr. Morgan:

On April 1, 2003, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on June 9, 2004, found that there is reason to believe you knowingly and willfully violated 2 U.S.C. § 434(b), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred.

If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

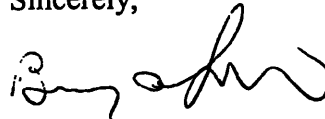
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Jack A. Gould, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis  
Designation of Counsel form

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT:      Jamie Jacob Morgan

MUR: 5358

**I.      GENERATION OF MATTER**

This matter was generated by a complaint filed with the Federal Election Commission by Matthew A. Roth, *et al.* See 2 U.S.C. § 437g(a)(1).

**II.      FACTUAL AND LEGAL ANALYSIS**

**A.      The Act<sup>1</sup>**

The Federal Election Campaign Act of 1971, as amended (“the Act”), requires every political committee to have a treasurer. 2 U.S.C. § 432(a). The treasurer is required to file periodic reports with the Commission disclosing the committee’s receipts and disbursements. 2 U.S.C. §§ 434(a)(1), 434(b). The treasurer, and any other person required to file any report or statement under the Act, is “personally responsible . . . for the accuracy of any information or statement contained in it.” 11 C.F.R. § 104.14(d).

The Act also addresses violations of law that are knowing and willful. See 2 U.S.C. § 437g(a)(5)(B). The phrase “knowing and willful” indicates that “actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976). See also *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986) (knowing and willful standard requires knowledge that one is violating the law).

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<sup>1</sup> The Federal Election Campaign Act of 1971, as amended (“the Act”), governs the activity in this matter and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 (“BCRA”). All references to the Act and regulations in this Report exclude the changes made by BCRA.

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1 A knowing and willful violation may be established “by proof that the defendant acted  
2 deliberately and with knowledge that the representation was false.” *United States v. Hopkins*,  
3 916 F.2d 207, 214 (5th Cir. 1990).

4 **B. Facts and Analysis**

5 Jamie Morgan was a 26-year-old law student when he ran for Congress in 2002.  
6 *See* Response to Complaint (“Response”). Morgan for Congress (“the Committee”) was Jamie  
7 Morgan’s principal campaign committee. John Morgan, the Committee’s treasurer, is Jamie  
8 Morgan’s brother. *Id.* Jamie Morgan’s campaign received favorable press, including an  
9 endorsement by *The Oakland Press*. *See* Oakland Press Staff, *You’ll be going to the polls*  
10 *Tuesday, right?*, *The Oakland Press*, August 4, 2002. Two weeks before the primary election,  
11 Jamie Morgan announced he was withdrawing from the race due to an illness in his family. Lee  
12 Dryden, *Illness in family forces candidate for Congress to pull out*, *The Oakland Press*, July 24,  
13 2002.<sup>2</sup> Because the deadline for withdrawing had passed, Jamie Morgan’s name remained on the  
14 ballot and he received 27% of the vote in the three-candidate race for the Republican nomination.  
15 *See* 2002 Official Michigan Primary Election Results – 12th District.

16 Complainants, who are the candidate’s former colleagues at the Oakland County Circuit  
17 Court, submitted sworn affidavits in which they aver the Committee’s disclosure reports include  
18 inaccurate information regarding campaign contributions and refunds attributed to them. *See*  
19 Complaint. The most egregious example comes from the lead complainant, Matthew Roth, who  
20 averred that he contributed no money to the candidate and yet the Committee reported that he

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<sup>2</sup> In his Response, Jamie Morgan indicated that his decision to withdraw from the race was based on the problems with the disclosure reports, which he did not want to answer for on the campaign trail, as well as his mother’s illness. *See* Response at 1.

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1 contributed \$2,000. *Id.* at 3. The following chart compares what the Committee reported in its  
2 April 15 Quarterly Report of Receipts and Disbursements (April 15, 2002) ("Q1 Report") and  
3 July 15 Quarterly Report of Receipts and Disbursements (July 16, 2002) ("Q2 Report") with  
4 what the complainants say they contributed.

5

Contributor	Committee Reports	Complainant Affidavit
Callaghan, Sean	\$700	\$25
Danou, Jessica	\$2,000	\$200
Davis, Justin	\$1,900	\$100
Horenstein, Joseph	\$2,000	\$25
Matthews, Cheryl	\$100	\$25
McDonald, Timothy <sup>3</sup>	\$2,000	\$100
Roth, Matthew	\$2,000	\$0

6 As discussed more fully below, the inaccurate reports appear not to be the product of  
7 computer problems as the candidate contends. In fact, the Q1 Report, which was handwritten  
8 and contains four inflated contributions and one fictitious contribution, was filed three months  
9 before the Committee requested a password to file the Q2 Report electronically.

10 **Q1 Report**

11 John Morgan signed and filed the Committee's Q1 Report. *See* Q1 Report (April 15,  
12 2002). The Q1 Report, which was handwritten, disclosed total contributions in the amount of  
13 \$11,300. Based on the complainants' affidavits, it appears that John Morgan inflated the

<sup>3</sup> The Committee also reported that Timothy McDonald's wife, Jennifer, contributed \$2,000. According to Timothy McDonald, he and his wife made a single contribution in the amount of \$100. *See* Complaint at 5.

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contributions made by Sean Callaghan, Joseph Horenstein, Cheryl Matthews, and Timothy McDonald, and created a fictitious contribution in Jennifer McDonald's name. *See Complaint at 4 – 7.*

Contributor	Q1 Report	Complainant Affidavit
Callaghan, Sean	\$200	\$25
Horenstein, Joseph	\$100	\$25
Matthews, Cheryl	\$100	\$25
McDonald, Timothy	\$200	\$100
McDonald, Jennifer	\$200	\$0

The report attracted the attention of the Commission's Reports Analysis Division ("RAD") because, among other things, the Committee used the box labeled "Amount of Each Receipt this Period" in Schedule A of the report to create a running total for the receipts received during that period. Accordingly, on July 10, 2002, RAD sent a request for additional information to the Committee's treasurer.

Five days later, Jamie Morgan called the FEC and asked how to enter a check that was designated for both elections (i.e. \$2,000 designated for both primary and general).

#### Q2 Report

The following day, John Morgan electronically filed the Committee's Q2 Report, which disclosed total contributions in the amount of \$254,200, including eighty-one (81) \$2,000 contributions. *See Q2 Report (July 16, 2002).* In the Q2 Report, six complainants are identified as having made contributions. According to their affidavits, however, none of them contributed to the Committee during that reporting period. *See Complaint at 2-6, 8.*

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Contributor	Q2 Report	Complainant Affidavit
Callaghan, Sean	\$500	\$0
Danou, Jessica	\$1,800	\$0
Davis, Justin	\$1,800	\$0
Horenstein, Joseph	\$1,900	\$0
McDonald, Timothy <sup>4</sup>	\$1,800	\$0
Roth, Matthew	\$2,000	\$0

Moreover, given the inaccurate information reported in reference to the complainants' contributions, it is likely that the Q2 Report, which disclosed \$199,800 in itemized contributions from 116 contributors, contains other fictitious contributions.

#### Amended Q1 Report

The Amended Q1 Report was signed and filed by John Morgan on August 8, 2002 in response to RAD's July 10, 2002 letter. Although the Amended Q1 Report corrected the technical problems outlined in the letter, the inflated and fictitious contributions were included in the total contributions (\$11,300) reported. *See* Amended Q1 Report (August 8, 2002) at 3.

It appears that John Morgan ceased performing his duties as treasurer prior to the Committee's termination. As discussed above, he filed only three of the Committee's reports. Although the Committee did not file an amended Statement of Organization designating Jamie Morgan as the new treasurer, Jamie Morgan signed and filed nine reports beginning with the Committee's Termination Report.<sup>5</sup>

<sup>4</sup> Jennifer McDonald is also identified as contributing \$1,800 during the Q2 reporting period; however, she and her husband made only a single \$100 contribution during the Q1 reporting period. *See* Complaint at 5.

<sup>5</sup> Most of those reports, which were amended reports filed in response to RAD letters, corrected technical errors and are not discussed below.

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**Termination Report**

Jamie Morgan electronically filed the Committee's Termination Report on July 18, 2002, four days before he withdrew from the primary election.<sup>6</sup> *See* Termination Report (July 18, 2002). That report disclosed refunded contributions in the amount of \$199,800, including a \$2,000 refund to complainant Matthew Roth, who avers he did not contribute any money to Jamie Morgan's campaign and did not receive the reported refund. *See* Complaint at 3.<sup>7</sup>

**Amended Q1 Report**

Although John Morgan filed a handwritten Amended Q1 Report on August 8, 2002, Jamie Morgan electronically filed a computer-generated Amended Q1 Report on September 13, 2002. *See* Amended Q1 Report (September 13, 2002). Jamie Morgan's Amended Q1 Report also disclosed \$11,300 in contributions, which includes the inflated and fictitious contributions from the original Q1 Report.

**Amended Q2 Report**

Jamie Morgan also electronically filed an Amended Q2 Report. *See* Amended Q2 Report (September 17, 2002). That report included the same fictitious contributions contained in the original Q2 Report. The most significant difference between the two reports is that the Amended Q2 Report disclosed a smaller amount of candidate contributions (\$32,550) than was disclosed in the original Q2 Report (\$50,650).<sup>8</sup>

<sup>6</sup> Jamie Morgan withdrew from the primary election on July 22, 2002.

<sup>7</sup> The Termination Report also discloses purported refunds to the other complainants, except for Cheryl Matthews.

<sup>8</sup> The Q1 Report disclosed \$6,500 in candidate contributions.

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**Jamie Morgan's Response<sup>9</sup>**

In his unsworn Response, Jamie Morgan admits that the complainants' allegations "are completely justified" but claims that the inaccuracies resulted from computer problems.<sup>10</sup> Response at 1. Yet the Q1 Report, which includes four inflated contributions and one fictitious contribution, was handwritten.

In order to file reports electronically from a computer, the Committee needed to request a password from the F.E.C.'s Electronic Filing Office (the "EFO").<sup>11</sup> Jamie Morgan did not request a password from the EFO until July 15, 2002, three months after the handwritten Q1 Report was filed. Consequently, Jamie Morgan's claim that the inaccuracies in the Q1 Report resulted from computer problems is without merit.

Moreover, several reports were electronically filed before September 5, 2002, when Jamie Morgan first told the EFO that his computer had a virus and he could not access his FEC report file.<sup>12</sup> Specifically, the Q2 Report, which includes seven fictitious contributions, was electronically filed on July 16, 2002, the Termination Report, which includes seven fictitious refunds, was electronically filed on July 18, 2002, and the Amended Termination Report, which includes the same seven fictitious refunds, was electronically filed on July 29, 2002. Since these reports were all filed electronically before Jamie Morgan alleged a computer problem in

<sup>9</sup> John Morgan did not submit a response to the Complaint.

<sup>10</sup> Jamie Morgan claims that he had a program that held mailing dates, call dates, total amounts allowed, amounts received, and all pertinent information together, and that this information became a "jumbled mess" when he attempted to transfer it to the FEC's database. Response at 1. Jamie Morgan also claims that he had problems with the "klez virus" that was freezing his systems. *Id.* Microsoft identified the "Klez" virus in January 2002. See <http://www.microsoft.com/technet/security/alerts/klez-e.msp>.

<sup>11</sup> The EFO issues passwords and provides technical support for e-filers.

<sup>12</sup> Not only did Jamie Morgan not inform the EFO of any computer problems prior to September 5, 2002, but he also did not communicate with RAD regarding computer problems.

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1 September 2002, his claim that the inaccuracies resulted from computer problems is again  
2 without merit.

3 **III. CONCLUSION**

4 Because it appears that Jamie Jacob Morgan acted deliberately and with knowledge that  
5 the refunded contributions in the Termination Report, as well as the contribution amounts in the  
6 amended Q1 and Q2 Reports, were false, there is reason to believe Jamie Jacob Morgan  
7 knowingly and willfully violated 2 U.S.C. § 434(b).

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